



Dear Members of the Senate Committee on Finance:

We are writing to express our opposition to SB 290, an act relating to regulating earned wage advance services.

CRL is a non-profit, non-partisan policy and research organization dedicated to building family wealth through the elimination of predatory lending practices. CRL is affiliated with Self-Help Credit Union, a national community development financial institution that provides access to safe, affordable financial services to low-income communities and borrowers.

For twenty years, the Center for Responsible Lending has been involved in research and policy regarding payday lending and other high-cost lending products. In the past few years, we have seen more “fintech” products entering the market, offering similar products but in a different form.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC’s expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. Among our consumer law treatises is Consumer Credit Regulation, which covers state law treatment of small dollar loans including earned wage advances.

We are concerned because SB 290 would break new ground by declaring that loans made through an “earned wage advance” app are not subject to Nevada’s statutes regulating credit. **No state has done what Nevada is proposing to do in this legislation, authorizing earned wage advances, including those that have no connection to employers, and carving them out from state credit laws.**

The proposed legislation provides a legal framework for both employer-integrated EWA models integrated with time-and-attendance systems, and “direct to consumer” fintech payday loans, where a user receives a payday advance that is later repaid through a debit of the user’s bank account. Significantly, this bill provides **no limit of any kind** on the amount of fees or other payments that providers can collect. It does require that there be some method for users to receive an EWA advance free of charge, but most consumers do not use free options, as they

typically require a delay in the advance or the inconvenience of setting up a separate account to receive the advance. The legislation also provides inadequate restrictions on the pressure techniques that companies can use to solicit “tips” from users, and allows for consequences of users do not tip enough, despite misleadingly advertising EWA products as “free.” Finally, the legislation permits EWA advances to be repaid through withdrawals from a user’s bank account **without providing any restriction on the number of withdrawal attempts**. This is a major issue that can lead to overdraft and nonsufficient funds fees. The bill does not require providers to reimburse consumers for these fees unless the fee results from an error on the provider’s part (e.g., debiting the account too early or in the wrong amount).<sup>1</sup>

A recent governmental analysis of data from **six million** EWA transactions demonstrates that EWA products can pose consumer harm and thus should not be exempted from existing credit laws. The analysis showed:

- **High APRs:** The average annual percentage rate (APR) was ~330% across the industry for both tip-based and non tip-based model, comparable to APRs for payday loans.
- **Repeat borrowing:** Consumers took out 36 advances a year on average, and up to 100.
- **Users “tip” when pushed to:** Companies that induce users to “tip” collected them 73% of the time.
- **Very little credit extended:** Most advances were between \$40 and \$100, for an average of 10 days.<sup>2</sup>

Proponents of the legislation have argued that consumer protections are needed for EWA, but the protections currently in the bill will not meaningfully protect users. The bill even exempts EWAs from the protections required of Nevada payday lenders, including that the lender:

- Limit the loan or a combination of loans by all lenders to an amount that is greater than 25% of a borrower’s expected gross monthly income;<sup>3</sup>
- Determine, upon consideration of a number of specified underwriting factors, that the consumer has a reasonable ability to repay the loan;<sup>4</sup>
- Offer extended payment plans in some circumstances;<sup>5</sup> and
- Report loans to a state database.<sup>6</sup>

There is no reason that EWAs and other fintech payday loans should not, at a minimum, have to comply with these requirements.

Both employer-based earned wage advances and direct-to-consumer tip-based advances are also loans under Nevada’s small loan law:

The payment of money ... as consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services **earned or to**

*be earned*, shall, for the purposes of regulation under this chapter, *be deemed a loan* of money secured by the sale, assignment or order.<sup>7</sup>

Nevada's small loan law is based on the Uniform Small Loan Law, which deliberately covered salary lenders who purchased earned wages at a discount. In order to prevent evasions of usury laws and to control the practice, *the model law specifically subjected wage advances to treatment as a loan*.<sup>8</sup> In California, regulators recently relied on similar language in California's statutes to determine that earned wage advances are loans.<sup>9</sup>

While the bill does prohibit initiating a debt collection action for unpaid EWA proceeds, EWA providers do not do that today, even absent regulation, and do not need to do so to be repaid. EWA providers recouped their advances in 97% of cases.<sup>10</sup> There is no need for debt collection when access to payroll deduction or a bank account is available. And while we recognize that the requirements of this act sunset at the end of 2029, there may be inertia and other pressure to extend the sunset even without adding other consumers protections for EWA to Nevada's laws.

**In essence, the bill exempts EWA providers from credit laws without substituting in place a meaningful regulatory regime.**

In 2019, regulators in 11 states, including New York, North Carolina, and Texas, launched an investigation to determine if the fintech companies engaging in payroll advances are doing so in violation of state banking laws.<sup>11</sup> This investigation is ongoing and will provide additional insight into the practices of these companies. In addition, the federal Consumer Financial Protection Bureau has indicated that more guidance is forthcoming regarding the treatment of EWA products and the definition of "credit" under federal law.<sup>12</sup> Before the Nevada legislature acts on this matter, it should await further information to ensure that any actions taken are appropriate.

In a letter to the CFPB in October 2021, 96 consumer, labor, civil rights, legal services, faith, community and financial organizations and academics noted:

Treating earned wage access products as credit does not mean that they should not exist. Free or very low-cost programs that are repaid entirely through payroll deduction or otherwise without debiting bank accounts or delaying receipt of wages may be a better alternative to high-cost payday loans. But these products are not without risks. They lead to the same cycle of repeat reborrowing as other balloon payment loans, and may lead to difficulties meeting future expenses or large bills such as rent or other monthly expenses. Programs that charge fees are particularly concerning, and the trend is for employers to offer earned wage access for free, making it especially inappropriate to carve loopholes for fee-based products in consumer protection laws covering credit. Even nominally low fees can add up due to the cycle of reborrowing and the frequent addition of

expedite fees. In the end, consumers may simply end up in a situation where they are routinely paying to be paid.<sup>13</sup>

We appreciate the desire to ensure that new financial products are appropriately regulated. But if Nevada wishes to authorize a new class of payday loans that avoid some of the worst problems with traditional payday loans, it must adopt much more substantive protections, going well beyond codifying the business model of providers of earned wage advances and tip-based advances. Because SB 290 exempts EWAs and other fintech payday loans from even the minimal protections required of Nevada payday lenders without substituting meaningful protections, we respectively opposed this bill.

Thank you for your consideration. If you have any questions please don't hesitate to contact us. We are happy to discuss this bill and EWA further, including what a meaningful regulatory structure for these products would look like.

Sincerely,

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<sup>1</sup> For more information about EWA and CRL's and NCLC's recommendations for reasonable guardrails against abuses by EWA providers, please see, CRL, [Earned Wage Access: States Should Regulate as Credit, Protect Consumers](#); NCLC, [Earned Wage Advances and Other Fintech Payday Loans: Workers Shouldn't Pay to be Paid \(Apr. 20, 2023\)](#).

<sup>2</sup> California Department of Financial Protection and Innovation, 2021 Earned Wage Access Data Findings (Q1 2023), <https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/03/2021-Earned-Wage-Access-Data-Findings-Cited-in-ISOR.pdf?emrc=08148f>. See NCLC, Data on Earned Wage Advances and Fintech Payday Loan "Tips" Show High Costs for Low-Wage Workers (April 10, 2023), <https://www.nclc.org/resources/data-on-earned-wage-advances-and-fintech-payday-loan-tips-show-high-costs-for-low-wage-workers/>.

<sup>3</sup> Nev. Rev. Stat. §§ 604A.5017(1), 604A.5018(1)(A).

<sup>4</sup> Nev. Rev. Stat. § 604A.5011.

<sup>5</sup> Nev. Rev. Stat. § 604A.5026.

<sup>6</sup> Nev. Rev. Stat. § 604A.5017(2)(b).

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<sup>7</sup> Nev. Rev. Stat. § 675.330 (emphasis added). Note, however, that Nevada prohibits licenses under its small loan law from taking wage assignments: “No assignment of wages, salary, commissions or other compensation for services, **whether earned or to be earned**, given to a licensee as security for a loan under this chapter, shall be valid.” Nev. Rev. Stat. § 675.340 (emphasis added).

<sup>8</sup> F. B. Hubachek, The Development of Regulatory Small Loan Laws, 8 *Law and Contemporary Problems* 108-145, 138, 142 (Winter 1941), <https://scholarship.law.duke.edu/lcp/vol8/iss1/11>).

<sup>9</sup> See NCLC, [California to Regulate Fintech Payday Loans](#) (Mar. 17, 2023); Calif. Dep’t of Fin’l Prot’n & Innov., [Initial Statement Of Reasons For The Proposed Adoption Of Regulations Under The California Consumer Financial Protection Law And The California Financing Law, California Deferred Deposit Transaction Law, And California Student Loan Servicing Act Pro 01-21](#).

<sup>10</sup> 2021 Earned Wage Access Data Findings, note 2, above.

<sup>11</sup> Press Release - August 6, 2019: Superintendent of Financial Services Linda A. Lacewell Leads Multistate Investigation of the Payroll Advance Industry | Department of Financial Services (ny.gov), [Press Release - August 6, 2019: Superintendent of Financial Services Linda A. Lacewell Leads Multistate Investigation of the Payroll Advance Industry | Department of Financial Services \(ny.gov\)](#).

<sup>12</sup> Press Release – June 30, 2022: CFPB Rescinds Special Regulatory Treatment for Payactiv, [CFPB Rescinds Special Regulatory Treatment for Payactiv | Consumer Financial Protection Bureau \(consumerfinance.gov\)](#)

<sup>13</sup> October 2021 letter to CFPB from 96 consumer, labor, civil rights, legal services, faith, community and financial organizations and academics, [Coalition Comments Urging CFPB to Rescind Earned Wage Access Advisory Opinion and Sandbox Approval - NCLC](#)